



HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

US EPA RECORDS CENTER REGION 5



514341

ADDRESS REPLY TO:
ATTORNEY GENERAL'S OFFICE
POLLUTION CONTROL DIVISION
1935 WEST COUNTY ROAD B-2
ROSEVILLE, MN 55113
TELEPHONE: (612) 296-7342

April 15, 1985

Edward J. Schwartzbauer
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, Minnesota 55402

Re: U.S. et al. v. Reilly Tar & Chemical Corp. et al.
Civ. No. 4-80-469

Dear Mr. Schwartzbauer:

In accordance with your agreement at the Courthouse last Wednesday, I am enclosing herewith and serving upon Reilly Tar & Chemical Corporation the Second Amended Complaint in Intervention of the State of Minnesota. Would you please complete and return the enclosed Admission of Service.

Thank you for your courtesy in accepting service on behalf of your client.

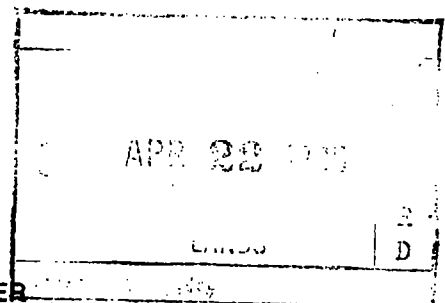
Very truly yours,

STEPHEN SHORMAN
Special Assistant
Attorney General

SS:mah

Enc.

cc: All Counsel of Record
Mr. Robert Polack



AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF MINNESOTA, by its
Attorney General Hubert H. Humphrey, III,
its Department of Health, and its
Pollution Control Agency,

Civil No. 4-80-469

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;
HOUSING AND REDEVELOPMENT AUTHORITY
OF ST. LOUIS PARK; OAK PARK VILLAGE
ASSOCIATES; RUSTIC OAKS CONDOMINIUM
INC.; and PHILIP'S INVESTMENT CO.,

Defendants.

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

SECOND AMENDED COMPLAINT
IN INTERVENTION OF THE
STATE OF MINNESOTA

INTRODUCTION

1. This action was commenced by the United States of America on September 4, 1980, to repair harm caused, and prevent future harm threatened, to the waters in the City of St. Louis Park by coal tar and coal tar derivatives discharged to the environment by Reilly Tar and Chemical Corporation (hereinafter "Reilly Tar"). Count I of this Complaint alleges violations by Reilly Tar of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, as amended by the Solid Waste Disposal Act Amendments of 1980, 42 U.S.C.A. § 6973 (1981). Count II herein alleges the creation of a public nuisance by Reilly Tar. Count III herein alleges violations by Reilly Tar of Minnesota pollution control statutes and rules. Counts IV and V allege liability on the basis of strict liability and negligence. Count VI alleges liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.A. § 9601 (1981) (hereinafter "Superfund Act"). Count VII alleges liability under the Minnesota Environmental Response and Liability Act, Minn. Stat. §§ 115B.04, 115B.17, and 115B.18 (1984) (hereinafter "Minnesota Superfund Act"). Judgment is sought requiring Reilly Tar to abate the pollution resulting from its use of coal tar, creosote and other coal tar derivatives and to reimburse the State for expenses of defining, monitoring, remedying and controlling this pollution, and to pay damages for injury done to the natural resources of the State.

JURISDICTION AND VENUE

2. This action arises under the laws of the United States and of the State of Minnesota. This Court has jurisdiction over Count I pursuant to 28 U.S.C. § 1331 and 42 U.S.C. §§ 6972-6973. This Court has pendent jurisdiction over Counts II through V and Count VII which are based on Minnesota law and arise out of a common nucleus of operative facts shared with Count I. This Court has jurisdiction over Count VI pursuant to § 113(b) of the Superfund Act, 42 U.S.C.A. § 9613(b) (1981).

3. Venue is proper in this District under 28 U.S.C. § 1391(b), 42 U.S.C. § 6973, and § 113(b) of the Superfund Act, 42 U.S.C.A. § 9613(b) (1981).

PARTIES

4. The Plaintiff United States of America is exercising the authority granted the Administrator of the United States Environmental Protection Agency (EPA) by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et. seq.

5. The Plaintiff-Intervenor State of Minnesota is a sovereign State of the United States acting through its Attorney General Hubert H. Humphrey, III, its Department of Health, and its Pollution Control Agency. Pursuant to Minn. Stat. § 116.16, subd. 1 (1978), Minn. Stat. § 115B.17, subd. 7 (1984), and common law, the State is trustee of the waters of the State. The Attorney General is a constitutional officer of the State of Minnesota and is empowered under common law and Minn. Stat. § 8.01 (1978) to commence suits for the protection of public rights.

The Attorney General represents the State in its fiduciary responsibility for the waters and other natural resources of the State; is empowered by Minn. Stat. § 115B.18, subd. 2 (1984) to bring a civil action to compel responsible persons to undertake remedial actions as requested by the Minnesota Pollution Control Agency; is empowered by Minn Stat. § 115B.17, subd. 6 (1984) to bring a civil action to recover any reasonable and necessary expenses incurred by the Minnesota Pollution Control Agency or its Director; and is "the authorized representative of [the] State" for purposes of § 107(f) of the Superfund Act, 42 U.S.C.A. § 9607(f) (1981). The Department of Health is a statutory agency of the State of Minnesota with broad authority under Minn. Stat. ch. 144 (1978), to protect the public health and public water supplies. The Pollution Control Agency (PCA) is a statutory agency of the State of Minnesota with power under Minn. Stat. ch. 115-116 (1978), and Minn. Stat. ch. 115B (1984), to prevent, control and abate pollution of the waters of the State, including ground water.

6. Defendant Reilly Tar is an Indiana corporation. The claims asserted herein against Reilly Tar arise from business activities conducted in Minnesota by Reilly Tar.

7. Defendant Housing and Redevelopment Authority of St. Louis Park is a municipal corporation organized and existing under the laws of Minnesota. Defendant Oak Park Village Associates, a limited partnership existing under the laws of the

State of Minnesota, bought part of the Reilly Tar site in January, 1978. Defendant Rustic Oaks Condominium, Inc., incorporated under the laws of the State of Minnesota, bought part of the Reilly Tar site in June, 1978, and May, 1979. Defendant Philip's Investment Co. bought part of the Reilly Tar site in January, 1980. Defendant Housing and Redevelopment Authority of St. Louis Park still owns part of the Reilly Tar site. The Defendants named in this paragraph are named as defendants only to insure that the remedial measures sought by the Plaintiff-Intervenor can be fully implemented.

FACTUAL BACKGROUND

8. The State alleges and incorporates by reference paragraphs 5 through 23 of the First Amended Complaint of the Plaintiff United States of America which describe the activities of Defendants in St. Louis Park, Minnesota, and the endangerment to health and the environment created by the activities of Reilly Tar. Subsequent to filing of that Complaint, a municipal well in the City of Hopkins was closed on February 18, 1981, because of contamination with polynuclear aromatic hydrocarbon ("PAH") compounds believed to have migrated from the area of the Reilly Tar site in St. Louis Park.

9. The State of Minnesota through its agencies and its Attorney General has engaged in substantial efforts to abate and correct the harm caused to health and the environment of Minnesota by the activities of Reilly Tar. These efforts include

the filing of a lawsuit in October, 1970, against Reilly Tar in the District Court of Minnesota, Fourth Judicial District, and the filing of an amended complaint in September, 1978. Other efforts by the State, all of which are consistent with the National Contingency Plan, include administrative actions, extensive chemical analyses, investigations of the extent of the contamination, development of remedial programs, assessment of health risks, closing of area wells, and monitoring of public drinking water supplies.

10. The investigative and enforcement actions taken by the State establish that coal tar and its derivatives from Reilly Tar's Minnesota operation have created an extremely large area of contamination in the soil and ground water on and about its former plant site. These wastes contain highly toxic compounds, including PAH's, some of which are carcinogenic in nature. Chemical analyses show that these wastes are present both in the soil and in the ground water which is utilized as a public drinking water supply. Studies of the extent of contamination establish that the areal extent of contamination is growing and moving to more areas heavily used for drinking water supplies.

11. All of these efforts by the State have been undertaken at considerable expense, in an attempt to define and contain the serious and potentially disastrous situation resulting from Reilly Tar's operations. Reilly Tar has consistently refused to take any corrective action to mitigate the harm it has caused to the environment and health of Minnesota.

COUNT I

RESOURCE CONSERVATION AND RECOVERY ACT

12. The State realleges paragraphs 1 through 11 of this Complaint.

13. Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, as amended by the Solid Waste Disposal Act Amendments of 1980, 42 U.S.C.A. § 6973 (1981) (as amended by the "The Hazardous and Solid Waste Amendments of 1984") provides, in pertinent part, as follows:

Notwithstanding any other provision of this chapter, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a facility) who has contributed or who is contributing to such handling, storage, treatment, transportation, or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal or to order such persons to take such other action as may be necessary or both. . . . The Administrator shall provide notice to the affected State of any such suit.

14. Hazardous waste is defined in Section 1004(5) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6903(5), as follows:

The term 'hazardous waste' means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristic may

- A. cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness, or
- B. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

15. The chemical wastes disposed of upon and into the ground on the Reilly Tar site are hazardous waste as defined in Section 1004(5) of the Resource Conservation and Recovery Act.

16. Disposal is defined in Section 1004(3) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6903(3), as follows:

The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

17. The discharge, deposit, dumping, spilling, leaking and placing of hazardous waste upon and into the ground and water on and beneath the Reilly Tar site constitutes disposal as defined in Section 1004(3) of the Resource Conservation and Recovery Act.

18. The defendants have contributed and are contributing to such disposal.

19. Reilly Tar's past handling, storage, and treatment of hazardous waste and the past and present disposal of hazardous waste upon and into the ground and water on and beneath the Reilly Tar site may present and are presenting an imminent and substantial endangerment to health and the environment.

COUNT II

PUBLIC NUISANCE

20. The State realleges the allegations contained in paragraphs 1 through 11 of this Complaint.

21. The aforesaid actions by Reilly Tar have created a common law public nuisance which has damaged the State and its citizens and inhabitants in a substantial amount not yet ascertained but to be determined in this action. Said public nuisance will continue to damage the State and its citizens and inhabitants until such time as the pollution of ground water caused by Reilly Tar's actions is abated.

22. Reilly Tar has violated State Statutes and Rules, as set forth hereinafter in paragraphs 23 through 26. These violations constitute a statutory public nuisance, as provided in Minn. Stat. § 115.071, subd. 4 (1978).

COUNT III

VIOLATION OF STATE STATUTES AND RULES

23. The State realleges the allegations contained in paragraphs 1 through 11 of this Complaint.

24. Reilly Tar has violated Minn. Stat. § 115.061 (1978) (enacted in 1969 as Minn. Laws 1969, ch. 931, § 4) which requires Reilly Tar to notify the PCA immediately of its discharges of coal tar, creosote and other coal tar derivatives and to take whatever immediate action was and is reasonably possible to recover the discharged pollutants and to minimize or abate pollution of the waters of the state.

25. Reilly Tar has violated Minn. Stat. § 115.07, subd. 1 (1978) (enacted in 1945 as Minn. Laws 1945, ch. 395, § 1) which requires Reilly Tar to obtain a permit for its activities in the State of Minnesota.

26. Reilly Tar has violated Minn. Reg. WPC 4(b) (1964), 6 MCAR § 4.8004(b), which requires Reilly Tar to store oil and other liquid substances with reasonable safeguards to prevent pollution of the waters of the State and to obtain a permit for such storage.

COUNT IV

STRICT LIABILITY FOR ABNORMALLY
DANGEROUS ACTIVITIES

27. The State realleges the allegations contained in paragraphs 1 through 11 of this Complaint.

28. Because of the potential for water pollution by coal tar, creosote and the other coal tar derivatives used in or resulting from Reilly Tar's operations, the activities of Reilly Tar herein complained of constituted an unduly dangerous activity involving a risk of serious harm to the citizens and inhabitants of the State.

29. Reilly Tar knew or should have known that the activities herein complained of were unduly dangerous and involved a risk of serious harm to the citizens and inhabitants of the State. Reilly Tar voluntarily engaged in such unduly dangerous activities for its own pecuniary gain.

30. As a direct and proximate result of the actions of Reilly Tar, for which it is strictly liable, the State and its citizens and inhabitants have suffered substantial damages in an amount not yet ascertained but to be determined in this action.

COUNT V

NEGLIGENCE

31. The State realleges the allegations contained in paragraphs 1 through 11 of this Complaint.

32. The actions of Reilly Tar complained of herein were in violation of a duty of care owed to the State and its citizens and inhabitants, in that said actions were unreasonable, careless and negligent.

33. As a direct and proximate result of the negligent actions of Reilly Tar, the State and its citizens and inhabitants have suffered substantial damages in an amount not yet ascertained but to be determined in this action.

COUNT VI

COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION, AND LIABILITY ACT
(SUPERFUND ACT)

34. Section 107 of the Superfund Act, 42 U.S.C.A. § 9607 (1981), provides in part:

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section

(1) The owner and operator of....a facility, [and]

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of

shall be liable for

- (A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan [and]

* * *

- (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss resulting from such a release.

* * *

- (f) In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State...

The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

35. A "hazardous substance" is defined in section 101(14) of the Superfund Act, 42 U.S.C.A. § 9601(14) (1981), to include, inter alia, any hazardous waste "having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act."

36. Under authority of § 3001 of the Solid Waste Disposal Act Amendments of 1980, 42 U.S.C.A. § 6921 (1981), the Administrator of the Environmental Protection Agency has promulgated regulations identifying and listing hazardous wastes. Coal tar, creosote, phenol, and numerous other chemicals believed to be in the coal tar and coal tar derivatives discharged to the environment by Reilly Tar are classified as hazardous in the regulations. 45 Fed. Reg. 33,119-33,133 (May 19, 1980), as modified in pertinent part by 45 Fed. Reg. 74,884-74,892 (Nov. 12, 1980) (to be codified in 40 C.F.R. Part 261). To the extent that Reilly Tar provided wastewater treatment at its facility in St. Louis Park, two sludges resulting from such treatment have been classified by the EPA, in interim final regulations, as hazardous. These sludges are "bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol" and "wastewater treatment sludges generated in the production of creosote." 45 Fed. Reg. 74,884-74,892 (Nov. 12, 1980) (to be codified in 40 C.F.R. §§ 261.32-261.33).

37. Because coal tar and coal tar derivatives disposed of at the Reilly Tar site have been identified as hazardous under the authority of section 3001 of the Solid Waste Disposal Act Amendments of 1980, they are hazardous substances within the meaning of section 101(14) of the Superfund Act, 42 U.S.C.A. § 9601(14) (1981).

38. The Reilly Tar site, the building and equipment operated by Reilly Tar on the site, and the wells, ditches, and other avenues of drainage from the site constitute a "facility" within the meaning of section 101(9) of the Superfund Act, 42 U.S.C.A. § 9601(9) (1981).

39. Reilly Tar owned or operated a facility at which hazardous substances were disposed of, within the meaning of section 107(a) of the Superfund Act, 42 U.S.C.A. § 9607(a) (1981).

40. The hazardous substances disposed of by Reilly Tar have leached and migrated and are presently continuing to leach and migrate into the aquifer system which underlies St. Louis Park, Hopkins and surrounding communities. This leaching and migration is a "release" within the meaning of Section 101(22) of the Superfund Act, 42 U.S.C.A. § 9601(22) (1981).

41. These hazardous substances have damaged the ground water resources of the State and are presently continuing to spread and cause further damage.

42. These hazardous substances have damaged the drinking water supply of the City of St. Louis Park. Their presence and the continuing threat of further contamination have required well closings, extensive sampling and analyses of the drinking water supply, and experimental projects to remove contaminants from the water.

43. The soils, ground water, and drinking water supplies affected by the substances leaching and migrating from the Reilly Tar site are "natural resources" of the State within the meaning of section 101(16) of the Superfund Act, 42 U.S.C.A. § 9601(16) (1981).

44. The disposal of hazardous substances on the surface and into the ground at the site was the result of willful misconduct and/or willful negligence within the privity or knowledge of Reilly Tar. Reilly Tar has also had notice of the ongoing leaching and migration of its hazardous substances and has willfully refused to monitor and evaluate the contamination, to remove the hazardous substances from the soil and ground water, or to take action to confine the spread of hazardous substances.

45. As a result of the acts and failures to act of Reilly Tar, for which it is strictly liable under section 107(a) of the Superfund Act, 42 U.S.C.A. § 9607(a) (1981), the State has incurred, and continues to incur, substantial expenses to assess and remedy the pollution condition and has suffered, and continues to suffer, substantial damages to its natural resources in amounts not yet ascertained but to be determined in this action.

46. By letter dated March 20, 1981, in accordance with Section 112(a) of the Superfund Act, 42 U.S.C.A. § 9612(a) (1981), the State presented its claim against Reilly Tar for

natural resource damages and costs of removal and remedial action. By letter dated March 27, 1981, Reilly Tar denied liability under the Act and has since taken no action to satisfy the State claims.

COUNT VII

MINNESOTA ENVIRONMENTAL RESPONSE
COMPENSATION AND LIABILITY ACT

47. Minn. Stat. § 115B.04 (1984) provides in part:

Subdivision 1. Liability. Except as otherwise provided in subdivisions 2 to 12, and notwithstanding any other provision or rule of law, any person who is responsible for a release or threatened release of a hazardous substance from a facility is strictly liable, jointly and severally, for the following response costs and damages which result from the release or threatened release or to which the release or threatened release significantly contributes:

(a) All reasonable and necessary response costs incurred by the state, a political subdivision of the state or the United States;

(b) All reasonable and necessary removal costs incurred by any person; and

(c) All damages for any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss.

48. Minn. Stat. § 115B.18 (1984) provides in part:

Subdivision 2. Action to compel performance. When any person who is responsible for a release from a facility of a pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or for a release or threatened release of a hazardous substance from a facility, fails to take response actions or to make reasonable progress in completing response actions requested as provided in subdivision 3, the attorney general may bring an action in the name of the state to compel performance of the requested response actions. . . .

49. "Hazardous substance" is defined in Minn. Stat. § 115B.02, subd. 8 (1984) as:

(a) Any commercial chemical designated pursuant to the Federal Water Pollution Control Act, under United States Code section 1321(b)(2)(A);

(b) Any hazardous air pollutant listed pursuant to the Clean Air Act, under 42 United States Code section 7412; and

(c) Any hazardous waste.

50. "Hazardous waste" is defined in Minn. Stat. § 115B.02, subd. 9 (1984) as:

(a) Any hazardous waste as defined in section 116.06, subdivision 13, and any substance identified as a hazardous waste pursuant to rules adopted by the agency under section 116.07; and

(b) Any hazardous waste as defined in the Resource Conservation and Recovery Act, under 42 United States Code section 6903, which is listed or has the characteristics identified under 42 United States Code section 6921, not including any hazardous waste the regulation of which has been suspended by act of Congress.

51. "Release" is defined in Minn. Stat. § 115B.02, subd. 15 to mean:

any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur.

52. "Facility" is defined in Minn. Stat. § 115B.02, subd. 5 (1984) to mean:

(a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft;

(b) Any watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water; or

(c) Any site or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

53. The Reilly plant, including the pipelines, storage containers, pond, wells, the wood treatment operation and the refinery all constitute facilities within the meaning of Minn. Stat. § 115B.02, subd. 5 (1984).

54. There has been and continues to be a release within the meaning of Minn. Stat. § 115B.02, subd. 15 (1984) from these facilities into the environment.

55. These releases involve hazardous substances as defined under Minn. Stat. § 115B.02, subd. 8 (1984) and include creosote, and the constituents of creosote.

56. Under Minn. Stat. § 115B.03 (1984), Reilly is "responsible" for these releases because it owned and operated the facility when the hazardous substances were placed or came to be placed in or on the facility and during at least part of the time of the release and threatened release and because it owned and possessed the hazardous substances and arranged for disposal.

57. The State realleges the allegations contained in paragraphs 41 and 42.

58. Minn. Stat. § 115B.17, subd. 7 (1984) provides in part:

For the purpose of this subdivision, the state is the trustee of the air, water and wildlife of the state. An action pursuant to section 115B.04 for damages with respect to air, water or wildlife may be brought by the attorney general in the name of the state as trustee for those natural resources. . . .

59. The soils, ground water, and drinking water supplies affected by the substances released from the Reilly Tar site are "natural resources" of the State within the meaning of Minn. Stat. § 115B.02, subd. 10 (1984).

60. As a result of the acts and failures to act of Reilly Tar, for which it is strictly liable under Minn. Stat. § 115B.04 (1984), the State has incurred, and continues to incur, substantial expenses to assess and remedy the pollution condition and has suffered, and continues to suffer, substantial damages to its natural resources in amounts not yet ascertained but to be determined in this action.

61. Minn. Stat. § 115B.17, subd. 6 provides in part:

Any reasonable and necessary expenses incurred by the agency or director pursuant to this section, including all response costs, and administrative and legal expenses, may be recovered in a civil action brought by the attorney general against any person who may be liable under section 115B.04 or any other law. The agency's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary.

62. The Minnesota Pollution Control Agency and its Director have incurred, and continue to incur, reasonable and necessary expenses, including response costs, and administrative and legal expenses, related to Reilly's releases and threatened releases from its facility.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff-Intervenor State of Minnesota prays that this Court issue its judgment and order:

1. Assessing against Reilly Tar and Chemical Corporation damages for injury to, destruction of, and loss of natural resources of the State in an amount to be determined in this action and assessing civil penalties and damages in an amount determined by this Court pursuant to Minn. Stat. § 115.071, subd. 3 (1978), for the violations of Minn. Stat. §§ 115.061, 115.07, subd. 1 (1978), and Minn. Reg. WPC 4(b) (1964) (6 MCAR § 4.8004(b)).

2. Ordering Reilly Tar and Chemical Corporation to prevent the further spread in the ground water and aquifers of hazardous wastes from the Reilly Tar site by accomplishing measures, including the following, according to a plan and schedule approved by the Court after consultation with the Environmental Protection Agency and the State of Minnesota:

- a. Install and operate a system of gradient control or barrier wells which includes treatment with appropriate chemical technology of the ground waters extracted from the wells;
- b. Locate, inspect, clean, properly abandon, and monitor existing wells which may facilitate the spread of hazardous wastes from the Reilly Tar site;

- c. Reconstruct and pump out the two deep wells on the Reilly Tar site;
- d. Develop a well-field management plan for, and monitor and verify with progress reports filed with the Court, the Environmental Protection Agency and the State of Minnesota, the accomplishment of all measures identified in the court-approved plan.

3. Ordering Reilly Tar and Chemical Corporation to repair and clean up the pollution caused by its handling, storage, treatment, and disposal of hazardous wastes at the Reilly Tar site by accomplishing measures, including the following, according to a plan and schedule approved by the Court after consultation with the Environmental Protection Agency and the State of Minnesota:

- a. Determine the nature and extent of contamination by hazardous wastes of the soil on, in, beneath, and immediately surrounding the Reilly Tar site;
- b. Remove, neutralize, or isolate all hazardous wastes and contaminated soil, on, in, beneath, and immediately surrounding the Reilly Tar site in order to eliminate further leaching and migration of hazardous wastes into the ground water and aquifers;
- c. Remove hazardous wastes from the Reilly Tar site from the ground water and aquifers;

- d. Insure the proper collection, disposal, and/or treatment of any hazardous wastes, contaminated soil, or contaminated ground water removed from the environment as a result of the implementation of the measures required by subparagraphs b and c; and
- e. Monitor and verify with progress reports filed with the Court, the Environmental Protection Agency, and the State of Minnesota, the accomplishment of the measures required in subparagraphs a through d.

4. Ordering Reilly Tar and Chemical Corporation to finance all monitoring and maintenance necessary to verify the containment and clean-up of hazardous wastes from the Reilly Tar site.

5. Ordering Reilly Tar and Chemical Corporation to finance the restoration of the drinking water capacity which has been lost as a result of the closure of wells which have been contaminated with hazardous wastes and hazardous substances from the Reilly Tar site.

6. Ordering Reilly Tar and Chemical Corporation to pay the State of Minnesota its expenses for the studies and projects listed below; to pay the State of Minnesota additional expenses incurred by the State in taking samples, installing monitoring wells and otherwise identifying, quantifying, and locating hazardous wastes on and migrating from the Reilly Tar site; to pay the litigation expenses incurred by the State to the extent the violations alleged herein are shown to be willful; and to pay

the State all other reasonable and necessary response costs incurred by the Minnesota Pollution Control Agency or its Director, including all response costs, and administrative and legal expenses. Among the studies and projects which have been undertaken by the State of Minnesota at its expense are the following:

- a. Barr Engineering Report: A study of the contamination of soil and ground water and future impacts on water quality, completed at a cost of \$108,000.
- b. United States Geological Survey Cooperative Project: A study to define ground water flow and the transport of contaminants, completed at a cost of \$224,000.
- c. Well Abandonment Program: A program to locate, clean out, and seal or recomplete multi-aquifer wells which were facilitating, or appeared likely to facilitate, the spread of contaminants to deeper aquifers on which \$99,640 has been expended.
- d. Hickok Consortium Study: A contract to research measures and unit cost estimates for abating the soil and ground water contamination emanating from the Reilly Tar site, at a cost of \$120,000.

7. Ordering the Reilly Tar and Chemical Corporation to post a performance bond for the accomplishment of all remedial measures, the amount of which will be determined in later proceedings.

8. Declaring Reilly Tar and Chemical Corporation liable, under § 107 of CERCLA, 42 U.S.C.A. § 9607 and under ERLA, Minn. Stat. §§ 115B.04, subd. 1 and 115B.17, subd. 6 for all response costs, including administrative and legal expenses of the State.

9. Declaring the Reilly Tar and Chemical Corporation liable under Minn. Stat. §§ 115B.04 and 115B.17, subd. 7 for damages to natural resources and ordering the Reilly Tar and Chemical Corporation to pay to the State, in an amount to be determined in this action, for such damages;

10. Awarding the State of Minnesota the costs of this suit, including attorneys' fees, and such other relief as this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), the State demands a jury trial on its claim for damages to natural resources brought under Minn. Stat. §§ 115B.04 and 115B.17, subd. 7 (1984).


Dated: April 15, 1985

Respectfully submitted,

HUBERT H. HUMPHREY, III
Attorney General

Paul G. Zerby
Minnesota Department of Health
136 University Park Plaza Bldg.
2829 University Avenue S.E.
Minneapolis, MN. 55414

By:


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